



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: October 15, 2008

COUNCIL DISTRICT: Citywide
SNI AREA: All

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, THE ZONING CODE, TO STREAMLINE REQUIREMENTS FOR SPECIFIC COMMERCIAL USES AND TO MAKE OTHER CLARIFYING CHANGES.

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council approve the proposed ordinance to facilitate and simplify the permitting process for commercial activities to:

- Allow the sale of passenger vehicles, pick-up trucks (25 feet or less in length), and motorcycles with a Special Use Permit in the CN Commercial Neighborhood and CG Commercial General Zoning Districts;
- Allow outdoor dining incidental to a public eating or retail establishment in certain commercial zoning districts within 150 feet of residentially zoned property subject to certain restrictions;
- Add retail art studios as an enumerated use in commercial zoning districts subject to specific requirements;
- Revise the provisions for outdoor private property special events;
- Modify the front setback exception for commercial uses located adjacent to residential uses; and
- Make other related clarifying changes and amendments to commercial uses and regulations.

OUTCOME

Approval of the proposed ordinance would facilitate commercial development and decrease the time and cost associated with the establishment of certain commercial uses while retaining safeguards necessary to achieve the City's goals regarding land use compatibility.



Department of Planning, Building and Code Enforcement
JOSEPH HORWEDEL, DIRECTOR

NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Commercial and Industrial Streamlining Ordinances, Phase II

PROJECT FILE NUMBER: PP08-124

PROJECT DESCRIPTION: The project consists of amendments to Chapters 20.40, 20.50, 20.70, 20.80, 20.90, 20.100, and 20.200 of the Zoning Code, Title 20 of the San Jose Municipal Code, as follows:

| Commercial Streamlining | | |
|---|---|---|
| Use or Development Regulation | Existing Requirements | Proposed Requirements |
| Sale of passenger vehicles, pick-up trucks not exceeding 25 feet in length, and motorcycles | <ul style="list-style-type: none"> Allowed with a Conditional Use Permit in CN Commercial Neighborhood and CP Commercial Pedestrian District; incidental vehicle repair allowed with a Conditional Use Permit in CG Commercial General District. | <ul style="list-style-type: none"> Allow with a Special Use Permit in CN Commercial Neighborhood District and allow incidental vehicle repair with a Special Use Permit in CG Commercial General District. |
| Retail art studio, in which artistic items are created and sold on the premises | <ul style="list-style-type: none"> Not an enumerated use. Manufacturing not allowed in Commercial Districts. | <ul style="list-style-type: none"> Allow as a permitted use in CP Commercial Pedestrian, CN Commercial Neighborhood, CG Commercial General, CIC Combined Industrial/Commercial, DC Downtown Core, and DC-NT1 Downtown Core – Neighborhood Transition 1 Districts. Maximum 1,500 square feet of total floor area devoted to handcrafting, assembling or fabricating crafts. Minimum of 25% of total floor area devoted to retail sales. Parking: 1 per 200 square feet of retail floor area; 1 per 400 square feet if on ground floor in Neighborhood Business District. |

| Commercial Streamlining (continued) | | |
|---|---|---|
| Use or Development Regulation | Existing Requirements | Proposed Requirements |
| Outdoor dining incidental to a retail establishment or a public eating establishment | <ul style="list-style-type: none"> Outdoor dining is not an enumerated use. Parking requirement for outdoor dining is the same as for a public eating establishment – 1 space per 2.5 seats or 40 square feet of dining area, whichever require the greater number of spaces. | <ul style="list-style-type: none"> Enumerate outdoor dining as a permitted use incidental to a retail establishment or a public eating establishment in Commercial and Industrial Districts. Special Use Permit may be required if within 150 feet of residentially zoned property. No parking requirement for the first 25 outdoor dining seats; additional parking beyond the first 25 seats require 1 space per 2.5 seats. |
| Outdoor uses in Commercial Districts within 150 feet of residentially zoned property. | <ul style="list-style-type: none"> Special Use Permit required for outdoor uses except: seasonal sales, service windows associated with financial institutions for pedestrians, automatic vending machines, and plant nursery sales. | <ul style="list-style-type: none"> Exempt outdoor dining incidental to a retail establishment or a public eating establishment from Special Use Permit requirement if the use is separated from residentially zoned property by a non-residential building or a minimum of 100 feet, including a public right-of-way. |
| Outdoor private property special events (e.g., farmer's markets) | <ul style="list-style-type: none"> Requires a Special Use Permit if the event will not exceed 30 days or does not meet requirements for an Event Permit. Requires a Conditional Use Permit if event exceeds 30 days or does not meet requirements for an Event Permit. | <ul style="list-style-type: none"> Allow with a Special Use Permit if the event will not exceed 30 consecutive days and 45 days total, or does not meet requirements for an Event Permit. Allow with a Conditional Use Permit if the event exceeds 30 consecutive days and 45 days total, or does not meet requirements for an Event Permit. |
| Front setback exception | <ul style="list-style-type: none"> Requires, in certain circumstances, that a commercial property conform to the front setback of the adjacent Residential Zoning District. | <ul style="list-style-type: none"> Specifies that the residential front setback applies only to that portion of the commercial property located within 20 feet of the Residential Zoning District. |
| Parking requirement for public uses | <ul style="list-style-type: none"> Parking requirements are prescribed for public uses such as elementary schools, secondary schools, museums, and libraries. | <ul style="list-style-type: none"> Clarify that Title 20 does not regulate parking requirements for public uses by deleting all references to "public" and "private." |

| Industrial Streamlining | | |
|--------------------------------------|---|---|
| Use or Development Regulation | Existing Requirements | Proposed Requirements |
| "CM" permit requirement | <ul style="list-style-type: none"> CM denotes uses allowed with a Conditional Use Permit on properties with Mixed Industrial Overlay, as designated by the General Plan. | <ul style="list-style-type: none"> Change from "CM" to "C^{GP}." C^{GP} denotes uses allowed with a Conditional Use Permit on properties with Mixed Industrial Overlay or Combined Industrial/Commercial properties, as designated by the General Plan. |

| Industrial Streamlining (continued) | | |
|--|--|---|
| Use or Development Regulation | Existing Requirements | Proposed Requirements |
| CIC Combined Industrial/Commercial Zoning District | <ul style="list-style-type: none"> Not an enumerated zoning district. | <ul style="list-style-type: none"> Create a CIC Combined Industrial/Commercial District with use regulations that align with the General Plan's description of Combined Industrial/Commercial. Permitted and conditional uses include a compatible mixture of commercial, office, and industrial uses of the CG Commercial General, IP Industrial Park, and LI Light Industrial Districts. Establishment development regulations similar to that of the IP Industrial Park District. |
| Laboratory, medium manufacturing and assembly, and warehouse | <ul style="list-style-type: none"> Allowed with a Special Use Permit in IP Industrial Park District. | <ul style="list-style-type: none"> Allow as a permitted use in IP Industrial Park District. |
| Offices, research and development | <ul style="list-style-type: none"> Not an enumerated use. | <ul style="list-style-type: none"> Enumerate as a permitted use in the CIC Combined Industrial/Commercial and IP Industrial Park Districts. Parking: 1 space per 300 square feet. |
| Crematory | <ul style="list-style-type: none"> Allowed with a Conditional Use Permit in LI Light Industrial District with Mixed Industrial Overlay, as designated by the General Plan, and in HI Heavy Industrial District. | <ul style="list-style-type: none"> Allow with a Conditional Use Permit in LI Light Industrial District in addition to HI Heavy Industrial District. |
| Mortuary without funeral services | <ul style="list-style-type: none"> Not an enumerated use. | <ul style="list-style-type: none"> Allow as a permitted use in LI Light Industrial and HI Heavy Industrial Districts. |
| Warehouse retail | <ul style="list-style-type: none"> Not an enumerated use. | <ul style="list-style-type: none"> Enumerate and allow with a Special Use Permit in IP Industrial Park, LI Light Industrial, and HI Heavy Industrial Districts. Minimum 10,000 square feet of floor area, with minimum 90% of retail display of large items (e.g., furniture, appliances and machinery). Parking: Minimum 1 space per 2,000 square feet of floor area; maximum 1 space per 250 square feet. |
| Day care center | <ul style="list-style-type: none"> Allowed with a Conditional Use Permit in IP Industrial Park, LI Light Industrial and HI Heavy Industrial Districts with Mixed Industrial Overlay, as designated by the General Plan. | <ul style="list-style-type: none"> Eliminate day care center as a Conditional Use in the HI Heavy Industrial District with the Mixed Industrial Overlay, as designated by the General Plan. |

| Industrial Streamlining (continued) | | |
|-------------------------------------|---|---|
| Use or Development Regulation | Existing Requirements | Proposed Requirements |
| Miniwarehouse/mini storage | <ul style="list-style-type: none">▪ Permitted in LI Light Industrial and HI Heavy Industrial Districts. | <ul style="list-style-type: none">▪ Clarify that miniwarehouse/ministorage uses may include an incidental caretaker unit. |
| Above-ground storage tanks | <ul style="list-style-type: none">▪ Allowed with a Site Development Permit. | <ul style="list-style-type: none">▪ Allow above-ground storage tanks 2,000 gallons or less with a Permit Adjustment. |

PROJECT LOCATION: Citywide

COUNCIL DISTRICT: Citywide

CONTACT INFORMATION: Sylvia Do, Department of Planning, Building and Code Enforcement, City of San Jose, Third Floor Tower, 200 East Santa Clara Street, San Jose, CA 95113. Email: sylvia.do @sanjoseca.gov

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies no potentially significant effects on the environment would be likely to result from implementation of the project.

- I. **AESTHETICS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- II. **AGRICULTURE RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- III. **AIR QUALITY** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- IV. **BIOLOGICAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- V. **CULTURAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- VI. **GEOLOGY AND SOILS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- VII. **HAZARDS AND HAZARDOUS MATERIALS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- VIII. **HYDROLOGY AND WATER QUALITY** – The project will not have a significant impact

on this resource, therefore no mitigation is required.

- IX. LAND USE AND PLANNING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- X. MINERAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XI. NOISE** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XII. POPULATION AND HOUSING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XIII. PUBLIC SERVICES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XIV. RECREATION** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XV. TRANSPORTATION / TRAFFIC** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XVI. UTILITIES AND SERVICE SYSTEMS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XVII. MANDATORY FINDINGS OF SIGNIFICANCE** – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no additional mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on October 15, 2008, any person may:

- (1) Review the Draft Negative Declaration (ND) as an informational document only; or
- (2) Submit written comments regarding the information, analysis, and mitigation measures in the Draft ND. Before the ND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft ND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final ND; or
- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, San José CA 95113-1905 and include a \$100 filing fee. The written protest should make a "fair argument" based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed

public review period, the Director may (1) adopt the Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft ND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

Joseph Horwedel, Acting Director
Planning, Building and Code Enforcement

Circulated on: September 24, 2008

Akoni Davidson
Deputy

Adopted on: 10/17/08

SB Walish
Deputy

ND/SD 9-16-08

BACKGROUND

The General Plan specifies that the City should actively promote economic development through a simplified development review process. Consistent with this direction, staff periodically reviews the Zoning Ordinance to identify outdated measures and to determine where process and other requirements can be streamlined without diminishing the City's ability to achieve its land use goals.

On June 3, 2008, the City Council approved phase one of a two-phase series of streamlining ordinances. The second phase consists of three ordinance amendments that separately focus on the downtown, commercial, and industrial zoning districts. On October 8, 2008, the Planning Commission considered the downtown streamlining ordinance to refine and streamline requirements for business support and business and administrative office uses in downtown ground-floor tenant spaces, animal grooming uses, and live/work uses and recommended that the City Council approve the ordinance. The City Council is scheduled to consider the downtown ordinance on October 28, 2008. This report focuses on the modifications to the Commercial Zoning Districts. A separate report will discuss the proposed modifications to the Industrial Zoning Districts.

Table 1 identifies the proposed changes to the Commercial Zoning Districts.

Table 1. Proposed Changes

| Commercial Streamlining | | |
|---|---|--|
| Use or Development Regulation | Existing Requirements | Proposed Requirements |
| Sale of passenger vehicles, pick-up trucks (not exceeding 25 feet in length) and motorcycles; incidental repair | <ul style="list-style-type: none">▪ Sale of vehicles allowed with a Conditional Use Permit in CN Commercial Neighborhood and CP Commercial Pedestrian districts; sale of vehicles with incidental vehicle repair allowed with a Conditional Use Permit in CG Commercial General District. | <ul style="list-style-type: none">▪ Allow sale of vehicles with a Special Use Permit in CN Commercial Neighborhood District and allow sale of vehicles with incidental vehicle repair with a Special Use Permit in CG Commercial General District. Retain the Conditional Use Permit requirement in the CP Commercial Pedestrian District. |

| Commercial Streamlining (continued) | | |
|--|--|---|
| Use or Development Regulation | Existing Requirements | Proposed Requirements |
| Retail art studio, in which artistic items are created and sold on the premises | <ul style="list-style-type: none"> Not an enumerated use. Manufacturing not allowed in Commercial Districts. | <ul style="list-style-type: none"> Allow as a permitted use in CP Commercial Pedestrian, CN Commercial Neighborhood, and CG Commercial General Zoning districts subject to the following: <ul style="list-style-type: none"> Maximum 1,500 square feet of total floor area devoted to handcrafting, assembling or fabricating crafts. Minimum of 25% of total floor area devoted to retail sales. Parking: 1 per 200 square feet of retail floor area; 1 per 400 square feet of floor area if on ground floor in Neighborhood Business District. |
| Outdoor dining incidental to a retail establishment or a public eating establishment | <ul style="list-style-type: none"> Outdoor dining is not an enumerated use. Parking requirement for outdoor dining is the same as for a public eating establishment – 1 space per 2.5 seats or 40 square feet of dining area, whichever requires the greater number of spaces. | <ul style="list-style-type: none"> Enumerate outdoor dining as a permitted use incidental to a retail or public eating establishment in Commercial and Industrial Districts. A Special Use Permit may be required if located within 150 feet of residentially zoned property. No parking requirement for the first 25 outdoor dining seats; additional seating beyond the first 25 requires 1 space per 2.5 seats. |
| Outdoor uses in Commercial Districts within 150 feet of residentially zoned property | <ul style="list-style-type: none"> Special Use Permit required for outdoor uses except: seasonal sales, service windows associated with financial institutions for pedestrians, automatic vending machines, and plant nursery sales. | <ul style="list-style-type: none"> Exempt outdoor dining incidental to a retail or public eating establishment from Special Use Permit requirement if the use: is separated from residentially zoned property by a non-residential building or by a minimum of 100 feet, including a public right-of-way; does not include amplified sound; and does not operate between 10 p.m. and 6 a.m. |

| Commercial Streamlining (continued) | | |
|--|--|---|
| Use or Development Regulation | Existing Requirements | Proposed Requirements |
| Outdoor private property special events (e.g., farmer's markets) | <ul style="list-style-type: none"> Requires a Special Use Permit if the event will not exceed 30 days and does not meet requirements for an Event Permit. Requires a Conditional Use Permit if the event exceeds 30 days and does not meet requirements for an Event Permit. | <ul style="list-style-type: none"> Allow with a Special Use Permit if the event will not exceed 30 consecutive days and 45 days total, and does not meet requirements for an Event Permit. Allow with a Conditional Use Permit if the event exceeds 30 consecutive days or 45 days total, and does not meet requirements for an Event Permit. |
| Front setback exception | <ul style="list-style-type: none"> Requires that a commercially zoned property located adjacent to a residentially zoned property conform to the front setback requirement of the adjacent residential zoning district. | <ul style="list-style-type: none"> Specify that when a commercially zoned property is located at the end of a block adjacent to a residentially zoned property, the residential front setback applies only to that portion of the commercial property located within 20 feet of the residential zoning district. |
| Parking requirement for public uses | <ul style="list-style-type: none"> Parking requirements are prescribed for public uses, including elementary schools, secondary schools, museums, and libraries. | <ul style="list-style-type: none"> Clarify that Title 20 does not regulate parking requirements for public uses by deleting all references to "public" and "private." |

ANALYSIS

The proposed amendments are intended to implement and promote the General Plan's economic development strategy by encouraging commercial growth and providing employment opportunities. Based upon staff's experience in regulating and processing permits, the proposed code modifications and refinements reflect the changing dynamics of commercial uses and commercial development.

Sale of Passenger Vehicles, Pick-Up Trucks Not Exceeding 25 Feet in Length, and Motorcycles

Section 20.40.100 of Title 20 lists regulations for uses in Commercial Zoning Districts. Currently, the sale of passenger vehicles, pick-up trucks (not exceeding 25 feet in length), and motorcycles is permitted in the CG Commercial General Zoning District and requires a Conditional Use Permit (CUP) in the CN Commercial Neighborhood Zoning District. Vehicle sales with incidental vehicle repair is currently permitted only in the CG Commercial General Zoning District and only upon issuance of a CUP. The proposed ordinance would replace the Conditional Use Permit (CUP) requirement for the sale of passenger vehicles, pick-up trucks, and motorcycles in the CN

Commercial Neighborhood District with a Special Use Permit requirement. In the CG Commercial General District, the proposed ordinance would replace the current CUP requirement for vehicle sales that includes vehicle repair with an SUP requirement. The proposed ordinance does not change the CUP requirement for vehicle sales in the CP Commercial Pedestrian District where there is greater concern regarding the compatibility of vehicle related uses with the pedestrian character of the District.

Conditional Use Permits (CUPs) and Special Use Permits (SUPs) are required for uses that may not be appropriate at every location and that may benefit from specific conditions to control day-to-day operations to ensure overall land use compatibility. Both CUPs and SUPs may impose conditions that delineate the operating parameters for a proposed business, use or activity, and both include a noticed public hearing process. The decision-maker is the primary distinguishing feature of the two permit types:

- The Planning Commission makes the decision on a Conditional Use Permit (which may be appealed to the City Council); and
- The Director of Planning makes the decision on a Special Use Permit (which may be appealed to the Planning Commission).

Processing times and fees are greater for Conditional Use Permits due to the Planning Commission hearing process.

Based upon staff's experience in regulating this type of use, staff believes that the SUP process is adequate to achieve the City's land use goals regarding vehicles sales and incidental vehicle repair in the CN and CG Districts. The Special Use Permit process provides full opportunity for staff review and public input, allows the imposition of operational conditions to ensure compatibility with adjacent uses, and continues to allow for Planning Commission action through the Notice of Non-Compliance/Order to Show Cause process should a business operate contrary to the requirements of the Special Use Permit. The SUP requirement achieves the City's land use objectives through a process that is less costly and more time efficient, consequently, it also furthers the City's critical objectives for economic development.

Outdoor Commercial Uses

Section 20.40.520 of Title 20 establishes regulations for outdoor commercial uses. Currently, a Special Use Permit (SUP) is required for outdoor uses located within 150 feet of residentially zoned property, except seasonal sales, service windows associated with financial institutions for pedestrians, automatic vending machines, and plant nursery sales. This requirement can be unnecessarily burdensome, especially in the Neighborhood Business Districts (NBD) where parcels are often less than 150 feet deep and residential uses are frequently located immediately to the rear of the NBD properties. In such circumstances, a coffee shop currently requires a SUP to locate outdoor tables between the front of the business and the public sidewalk, even though the building separates the outdoor tables from the residences located at the rear of the property. In an effort to encourage outdoor dining in conjunction with restaurants, coffee shops and other retail uses, the proposed ordinance enumerates outdoor dining incidental to a public eating or retail establishment as a permitted use in commercial zoning districts if the use is located 150 feet or more from

residentially zoned property, and where the use is located closer than 150 feet to residentially zoned property, the ordinance provides an exemption from the Special Use Permit requirement for outdoor dining, when the dining area conforms to the following criteria:

1. The outdoor dining is separated from residentially zoned property by a non-residential building or a minimum of 100 feet that includes a public right-of-way; and
2. The outdoor dining does not include amplified sound; and
3. The outdoor use does not operate between 10 p.m. and 6 a.m.

The separation requirements and operational criteria of the proposed ordinance are intended to streamline the process for outdoor dining facilities that are unlikely to result in noise or other impacts on nearby residential uses, but to retain the Special Use Permit process for outdoor dining facilities that need additional scrutiny and public input to ensure that they are designed and conditioned in a manner that ensures compatibility. Where implementation of outdoor dining requires new construction (such as the installation of pavement, patio walls or shade structures), a permit would still be required even if the use does not require an SUP. In those instances, new construction would need to be consistent with the Zoning Code, not raise land use compatibility concerns, and could be approved with a simple over-the-counter Permit Adjustment.

The proposed ordinance also exempts the first 25 outdoor dining seats from the parking requirement otherwise applicable to a public eating establishment. Additional seating above and beyond the first 25 seats would be subject to the current restaurant requirement of one space per 2.5 seats or 40 square feet of dining area (whichever is greater), unless located on the ground floor in a Neighborhood Business District, in which case it would require one space per 400 square feet of floor area. This proposed reduction would facilitate four to six outdoor tables incidental to a public eating or retail establishment without additional parking, but would ensure that restaurants implementing large outdoor dining areas provide additional parking. This parking reduction will promote more lively and active commercial areas by removing an impediment to outdoor dining facilities that is unlikely to result in negative impacts on adjacent uses.

Retail Art Studios

Section 20.40.100 of Title 20 provides use regulations for each of the Commercial Zoning Districts. Currently, the retail sale of goods and merchandise is a permitted use in all of the Commercial Zoning Districts with the exception of the CO Commercial Office District. Manufacturing uses are not allowed in any of the Commercial Zoning Districts. Conversely, manufacturing is allowed at some level in all of the Industrial Zoning Districts, but commercial uses are significantly limited. These current regulations can present challenges for sculptors and other artists who seek a studio location where they can both create and sell art.

In order to facilitate art studios in commercial areas, staff is proposing to modify the requirements of the Commercial Zoning Districts to clearly allow the creation and sale of artistic items in a single location, even where the creation of artistic items involves what would otherwise be considered

manufacturing. The proposed ordinance enumerates *retail art studio* as a permitted use in the CP Commercial Pedestrian, CN Commercial Neighborhood, and CG Commercial General Zoning Districts subject to specific parameters. *Retail art studio* is defined as “an establishment in which artistic items are handcrafted or otherwise created on the premises for the purpose of sale on the premises, including but not limited to candles, paintings, fine art prints, jewelry, pottery, ceramics, sculptures and woodcarving.” Retail art studios are proposed to be allowed by right in these districts if they conform to the following parameters:

1. The retail use must be located on the ground floor of a building; and
2. The area where the art is created/manufactured is limited to a total of 1,500 square feet and must be contiguous to the retail sales area; and
3. A minimum of 25% of the total floor area must be devoted to retail sales; and
4. All activities except for retail sales must be conducted within a fully enclosed building; and
5. The use must conform to all applicable building and fire codes.

Staff believes that the proposed parameters will ensure that *retail art studios* allowed by right are consistent with the character of the Commercial Zoning Districts. Studios that do not comply with these parameters would be subject to a Special Use Permit, providing for discretionary review, public input and operational conditions to ensure that the proposed use is appropriate to the commercial setting and compatible with surrounding uses.

Outdoor Private Property Special Events

Part 16 of Chapter 20.80 establishes regulations for Outdoor Private Property Special Events. Currently, an outdoor private property special event requires a Special Use Permit if it does not exceed 30 days in a calendar year and does not meet the requirements for an Event Permit. An outdoor private property special event requires a Conditional Use Permit if it exceeds 30 days and does not meet the requirements for an Event Permit.

The proposed ordinance would allow an outdoor private property special event with a SUP if the event will not exceed 30 consecutive days and 45 days total, and does not meet the requirements for an event permit. An outdoor private property special event would require a CUP if it exceeds 30 consecutive days and 45 days total, and does not meet the requirements for an event permit. Due to the existing CUP requirement and limited number of permitted event days, outdoor special events such as farmer’s markets currently do not operate as many days throughout the year as the community would support. This ordinance amendment is intended allow outdoor special events to be held for more non-consecutive days throughout the year.

Front Setback Exception

Section 20.40.250 of Title 20 establishes a front setback exception for Commercial Zoning Districts. Currently, the setback exception requires, in certain circumstances, that a commercial property conform to the front setback of the adjacent Residential Zoning District.

The proposed ordinance would specify that the residential front setback applies only to that portion of the commercial property located within 20 feet of the adjacent Residential Zoning District. This ordinance amendment is intended to allow for more pedestrian-oriented development on corner parcels located at street intersections and to provide a reasonable transition for large commercial parcels adjacent to residential uses.

Other related clarifying changes

Chapter 20.90 of Title 20 establishes parking requirements to promote adequate off-street parking to meet the needs generated by a specific use. Currently, parking requirements are prescribed for public uses, including elementary schools, secondary schools, museums, and libraries. The proposed ordinance would clarify that Title 20 does not regulate parking requirements for public uses by deleting all references to “public” and “private.”

POLICY ALTERNATIVES

Alternative #1: Retain existing Zoning Ordinance provisions and not streamline, modify, or clarify regulations for land use regulations and development standards in Commercial Zoning Districts.

Pros: This alternative would maintain the same Zoning Ordinance requirements for specific uses over time.

Cons: Retaining current requirements would not achieve the economic development benefits of the proposed streamlining measures.

Reason for not recommending: The proposed streamlining measures offer tangible benefits in reduced time and costs for applicants without compromising the objectives of the City’s land use approval processes.

Alternative #2: Further streamline the use requirements and development standards of Commercial Zoning Districts for the sale of passenger vehicles, pick-up trucks not exceeding 25 feet in length, and motorcycles with or without incidental repair of vehicles as a permitted use in Commercial Zoning Districts.

Pros: This alternative could provide additional time and cost savings for applicants by eliminating a discretionary permit for auto dealerships with or without incidental vehicle repair.

Cons: Eliminating the Special Use Permit requirement for the sale of passenger vehicles, pick-up trucks not exceeding 25 feet in length, and motorcycles uses could potentially result in incompatible uses between auto dealerships and vehicle repair with residential uses.

Reason for not recommending: The SUP requirement would allow for staff review of the sale of passenger vehicles, pick-up trucks not exceeding 25 feet in length, and motorcycles the CN Commercial Neighborhood Zoning District and incidental vehicle repair in CG Commercial General Zoning Districts, a noticed public hearing to elicit community input, and a discretionary decision regarding the compatibility of the proposed use with the City's goals for ground floor uses in the Downtown.

PUBLIC OUTREACH/INTEREST

- ☐ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.

A notice of the public hearing was posted on the City website, published in the Mercury News and emailed to a citywide list of development interests, neighborhood associations and interested individuals. Staff has been available to discuss the proposal with interested members of the community.

Staff received correspondence from one member of the public (attached) related to outdoor dining incidental to a public eating establishment. The comments in Mr. Davy Hua's correspondence relate to a specific Planned Development Zoning and do not directly relate to the proposed ordinance amendment. The proposed criteria and Special Use Permit process would allow staff to adequately address the types of issues raised by Mr. Hua.

COORDINATION

The proposed ordinance and this report were coordinated with the San Jose Redevelopment Agency, the Office of Economic Development, and the City Attorney Office. The proposed ordinance was also coordinated with the neighborhood leaders and the development community.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan major strategies, goals, and policies that promote economic development through a streamlined development review process.

JOSEPH HORWEDEL, Director
Department of Planning, Building and Code
Enforcement

For questions please contact Sylvia Do at 408-535-7906.

Attachments

- 1) Draft Mitigated Negative Declaration, File No. PP08-124
- 2) Public comments from Mr. Davy Hua

[CC'ing Project Manager Ed and Margaret@Code Enforcement as well]

Hello Sylvia,

Per our conversation earlier today in regards to the upcoming public hearings to amend to zoning ordinance 20.40.520 which would allow outdoor seating+eating area within 150 feet of residential zoned properties, here is the signed petition by the residents whom are directly affected by the restaurants in the commercial complex of 1728 Hostetter Rd., San Jose, CA. In addition to the petition, there is also an introduction letter explaining the residents plight caused and potentially will cause by the outdoor seating+eating area if that somehow, with neglect to the residents protest, gets approved.

As always, we humbly THANK YOU ALL for your time and help with this matter. This has been an extreme pain point for the residents of this street, we will relentlessly fight for a safer and peaceful neighborhood.

Warm Regards,
Davy Hua
Frost Drive Residents Representative
(408)671-5767

To San Jose Planning Commission:

Enclosed is a petition signed by the residents of Frost Drive, which are located directly across a commercial strip mall; a strip mall that has previously violated Zoning Ordinance 20.40.520 by having un-permitted outdoor foods with seating area. This petition's goal is to stop the pending amendment(s) to 20.40.520 or related ordinances which would allow this specific commercial strip mall (1728 Hostetter Rd., San Jose, CA) to serve outdoor foods within 150 feet from a residentially zoned neighborhood.

As outlined in the petition, the residents are situated approximately 60 feet across from these restaurant establishments which are attempting to apply for exemption to serve foods outdoor (Previous permit is PDA00-061-02 and current one is PDC08-022). The proximity between these restaurants and the residents is uncommonly close to sustain such outdoor foods without invading the residents' privacy and cause public nuisances.

For years, these restaurants have served foods outdoor without proper permits and have caused unbearable nuisances and headaches for the residents who are situated directly across the street. These nuisances are as follows:

- Parking Problem
 - Overflow parking results in blockage of residents' driveways
- Neighborhood Blight
 - Patrons playing amplified music loudly from their car as they listen while sitting in the outdoor seating area(to as late as 2am on weekends)
 - Trash discarded by outdoor seating area patrons on both sides of the streets
- Lost of Privacy
 - Constant prying eyes from patrons sitting across the street in the outdoor foods area
 - Every moment scrutinized and monitored which opens to the opportunistic crime of home invasion robbery/burglary
- Vehicular Nuisance
 - Patrons would often travel at a high rate of speed on this street while arriving and departing as a form of "auto show and tell" for the other patrons of the outdoor eating area

We, the residents of Frost Drive, strongly urges the San Jose Planning Commission to consider all of these factors and swiftly deny any amendments or approval of conditional use permits to zoning ordinance 20.40.520 or any related ordinances/permits which would allow restaurants to serve outdoor foods with seating area within 150 feet of a residentially zoned property; more specifically as it applies to this 1728 Hostetter Rd., San Jose, CA commercial property.

Thank you for your time and consideration.


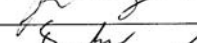
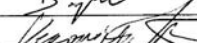
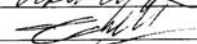

Frost Drive Petition to Oppose 1728 Hostetter Rd., San Jose, CA commercial complex's attempt to apply for conditional permits or amend for exemption to allow outdoor eating area.

We, the residents of Frost Drive, would like to make it known to The Planning Commission of the City of San Jose as well as The Council of the City of San Jose that we **STRONGLY OPPOSE** to any proposed amendment, updates, conditional or special exemption to zoning code section 20.40.520 which would allow the commercial property owner(s) of ~~1706~~ ¹⁷²⁸ Hostetter Road to have outdoor eating area.

As of May 2008, Half of the residents on this street are within the 150 feet limit of a commercially zoned plaza with two restaurant establishments serving foods outdoor. For the better half of the past decade, restaurants Barcode and Quiznos have been serving foods outdoor without proper permits and were in direct violation of zoning code section 20.40.520.

Back in September 2007, the residents of Frost Drive brought such violation to Code Enforcement's attention. After a long due process by the city, restaurants Barcode and Quiznos were finally ordered to cease the outdoor eating activity on April 25th, 2008.

By having outdoor foods within 150 feet of the residence on this street violates our rights to privacy as well as zoning code 20.40.520. As law abiding citizens and property tax payers, we have the rights to a peaceful neighborhood without daily public nuisance caused by patrons having outdoor foods in front of restaurants Barcode and Quiznos or any future establishments.

| House Number | Phone Number | Full Name | Signature |
|----------------|----------------|-----------------------------|---|
| 1592 Frost Dr. | (408) 451-9248 | ANDRINO RAMONOS FOR RAMONOS |  |
| 1612 Frost Dr. | (408) 667-8108 | BINH PHUNG |  |
| 1600 Frost Dr. | 408-671-5767 | Davy Hua |  |
| 1596 Frost | 408-436-4904 | Isor Kramer |  |
| 1608 Frost Dr. | 408 441 0412 | THANHA VOIL |  |